

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

TIMOTHY C. HSIA,

Plaintiff,

vs.

ANSWER

Civil Action No.: 3:24-cv-00083
(MAD/ML)

BROOME CO-OPERATIVE INSURANCE
COMPANY, and BURCH FAMILY
ENTERPRISES INC. D/B/A SERVICEMASTER
BY BURCH,

Defendants.

The Defendant, BURCH FAMILY ENTERPRISES, INC. D/B/A SERVICEMASTER BY BURCH, by and through its attorneys, Rizzo Reed & O'Brian, PLLC, as and for its Answer to the Plaintiff's Complaint, does hereby allege upon information and belief as follows:

ANSWERING THE GENERAL AND FACTUAL ALLEGATIONS

1. Denies each and every allegation set forth in paragraphs 1, 2, 6, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, and 26 of the Complaint.
2. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraphs 3, 4, 7, 8, 9, 10, 11, 12, 13, and 14 of the Complaint.
3. Admits the allegations set forth in paragraph 5 of the Complaint.
4. Denies the allegations set forth in paragraph 19 of the Complaint except admits that fans were utilized.

ANSWERING THE FIRST CAUSE OF ACTION

5. With respect to paragraph 27 of the Complaint, this Defendant repeats, reiterates and realleges the admissions and denials to the allegations set forth in paragraphs 1 through 4 hereinabove with the same force and effect as though set forth at length herein.

6. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraphs 28, 29, 30, 31, 32, and 33 of the Complaint.

ANSWERING THE SECOND CAUSE OF ACTION

7. With respect to paragraph 34 of the Complaint, this Defendant repeats, reiterates and realleges the admissions and denials to the allegations set forth in paragraphs 1 through 6 hereinabove with the same force and effect as though set forth at length herein.

8. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraphs 35, 36, and 37 of the Complaint.

ANSWERING THE THIRD CAUSE OF ACTION

9. With respect to paragraph 38 of the Complaint, this Defendant repeats, reiterates and realleges the admissions and denials to the allegations set forth in paragraphs 1 through 8 hereinabove with the same force and effect as though set forth at length herein.

10. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraphs 39 and 40 of the Complaint.

11. Denies each and every allegation set forth in paragraphs 41 and 42 of the Complaint.

ANSWERING THE FOURTH CAUSE OF ACTION

12. With respect to paragraph 43 of the Complaint, this Defendant repeats, reiterates and realleges the admissions and denials to the allegations set forth in paragraphs 1 through 11 hereinabove with the same force and effect as though set forth at length herein.

13. Denies each and every allegation set forth in paragraphs 48, 49, 50, 52, 53, 54, 55, and 56 of the Complaint.

14. Denies the allegations set forth in paragraph 44 of the Complaint except admits the certification and begs leave to refer to the professional standards referenced when produced by the Plaintiff at trial.

15. Denies the allegations set forth in paragraphs 45, 46, and 47 of the Complaint and begs leave to refer to the professional standards referenced when produced by the Plaintiff at trial.

16. Denies the allegation set forth in paragraph 51 of the Complaint except admit the duty of good faith business dealings.

ANSWERING THE FIFTH CAUSE OF ACTION

17. With respect to paragraph 57 of the Complaint, this Defendant repeats, reiterates and realleges the admissions and denials to the allegations set forth in paragraphs 1 through 16 hereinabove with the same force and effect as though set forth at length herein.

18. Denies each and every allegation set forth in paragraphs 58, 59, 60, and 61 of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

19. The Plaintiff's Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

20. This Court lacks subject-matter jurisdiction over the instant action.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

21. The Plaintiff failed to mitigate his damages.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

22. The Plaintiff's alleged damages were caused or contributed to by parties over whom this answering Defendant exercised no degree of control or supervision.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

23. The Plaintiff's Complaint fails to plead with requisite particularity under CPLR 3016(b).

WHEREFORE, the Defendant, BURCH FAMILY ENTERPRISES, INC. D/B/A SERVICEMASTER BY BURCH, demands judgment against Plaintiff dismissing the Complaint with prejudice, and awarding the costs and disbursements of the action, including reasonable attorney fees, together with such other and further relief as the Court deems just and proper.

Dated: March 5, 2024

Joseph B. Rizzo, Esq.

RIZZO REED & O'BRIAN, PLLC

Joseph B. Rizzo, Esq.

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